

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-311
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF CITY OF ALBUQUERQUE

These Comments are filed by the City of Albuquerque in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Albuquerque believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

The City of Albuquerque is a city with a population of 472,000. Our franchised cable provider is Comcast Cablevision of New Mexico, Inc.

Our Current Franchise

Our current franchise is a renewal franchise which began in 2002 and expires on October 2, 2017. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the city in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system: We currently have one channel devoted to public access; one channel devoted to educational access; and one channel devoted to government access. Up to three additional analog channels to be shared by the PEG operators are to be provided as certain programming requirements are met. Three additional digital PEG channels are to be provided upon request no sooner than January 1, 2007.

Our franchise requires that our PEG channels and institutional network ("I-Net") be supported by the cable operator through the payment of 44 cents per subscriber per month. These payments are used for capital support for PEG facilities and the I-Net. The franchise also provides that in connection with system upgrades the operator will provide at cost two pairs of single mode fiber and 75 sites for the I-Net. We use this for an educational I-Net and a government I-Net which are interconnected. These I-Nets can provide data, voice and video services to and between educational, research and development, telemedicine, telehealth and government, including public safety, libraries and aviation facilities. The I-net's high-speed community network can share information from one facility to another, from one facility to many others and vice versa or from many facilities to many others to satisfy requirements for transmission of GIS data, live and stored instructional information for distance learning and staff training, video conferencing, video streaming and cultural activities and performances. The I-Nets are constructed to provide backup paths so that if a single link is not forwarding information it can be transitioned to other links to reach the destination. This aspect is extremely important to telemedicine and public safety organizations where continuous information flow is critical. Albuquerque's I-Nets provide an opportunity to develop a telecommunications infrastructure that promotes the availability of diverse, multimedia information resources to the community. The I-Net provides opportunities for more open government, enhanced educational opportunities

Our franchise contains the following requirements regarding emergency alerts: The franchisee must maintain an emergency alert system that can override audio and video on all channels to provide an emergency alert to all subscribers in the city. Local officials must be able to activate the system remotely using a telephone and secure password. The official must be able to activate a pre-recorded text message or a live audio voice message. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise requires that Comcast meet or exceed the FCC customer service standards. The customers' bills include the telephone number of the office at the City of Albuquerque to call with any service complaints.

Our franchise contains the following reasonable build schedule for the cable operator: The Franchisee is to extend service upon request within its franchise area provided that it may require a potential subscriber to contribute a fair share of the capital costs of line extension in cases where the population density and/or penetration make the line extension unduly expensive. It shall comply with all applicable law regarding nondiscrimination including economic redlining.

In order to ensure that our residents have access to current telecommunications technologies, our franchise requires the franchisee to upgrade its cable system so that the subscriber network is capable of transporting at least 80 analog channels. In connection with the upgrade, the franchisee is to install and maintain facilities and equipment that permit and are capable of meeting FCC standards for passing through the program related television video and audio signals received at the headend without substantial alteration or deterioration. Facilities and equipment shall be installed and operated so that subscribers can receive closed captioning and secondary audio in accordance with federal law and regulation. It is the franchisee's

responsibility to make such improvements to its cable system as are necessary so that the cable system performs as promised as subscribers to services are added and to make such commercially practicable improvements to its cable system throughout the franchise term to ensure that the cable system is sufficiently advanced to offer new services to subscribers.

Our franchise ordinance contains a level playing field provision which requires that any additional cable franchise include the same franchise fee of 5%, a term of no more than 15 years, comparable I-Net obligations, PEG access and I-Net capital funding obligations and customer service standards.

Our franchise contains the following insurance and bonding requirements: comprehensive commercial general liability and automobile liability insurance with limits in amounts not less than \$1,000,000; a city's protective public liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death and property damage in any one occurrence and workers compensation insurance. A performance bond of 10% of the estimated cost of constructing or upgrading the cable system and a cash security fund or irrevocable letter of credit of no less than \$25,000.

The cable franchise grants the cable operator access to the public rights-of-way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights-of-way. The City has a Barricade and Excavation Ordinance that establishes the permitting procedure for work in the City's rights-of-way. The operator must comply with all the permitting requirements, safety codes, provide maps and assure that following any excavation, the operator shall restore the rights-of-way to its pre-excavation condition. We also assure that when the city performs any work in the rights-of-way the operator will be required to relocate its facilities.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The City is granted the right to inspect and copy the operator's books and records at a location within the City, unless the operator pays all travel and copying expenses incurred by the City to examine the records elsewhere. Once a year the City may direct the operator to prepare reports reasonably necessary for the City to monitor compliance including reports on service calls, hours of known outages and an audited or certified revenue report. The City Council may revoke a franchise if it finds there has been a material breach. A procedure including notice and a public hearing is established prior to revocation. Liquidated damages are established for specific violations such as failure to complete construction in accordance with the franchise, failure to complete and upgrade, failure to comply with the PEG access requirements and for violations of customer service standards.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that

these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: The franchise requires compliance with all current federal, state and city laws, regulations and ordinances including those rules and regulations adopted by the Federal Communications Commission and requires compliance with all ordinances lawfully hereafter passed or adopted pursuant to the city's police power.

While a franchise is negotiated by the local government as a contract, since the agreements become ordinances, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. The franchise includes a master franchise ordinance applicable to all cable operators as well as a franchise ordinance granting the specific operator a franchise. Since both are treated as ordinances, the requirements for passage of laws by the City Council including publication notice and public hearings are exercised.

Competitive Cable Systems

Our community has not been approached by a competitive provider to provide service. It has not denied any provider the opportunity to serve in our community. The master ordinance applicable to all operators is the mechanism by which a competitor would be offered a comparable franchise.

Conclusions

The local cable franchising process functions well in the City of Albuquerque. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

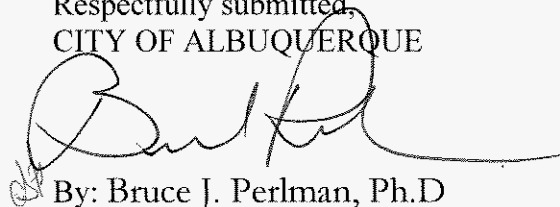
Local cable franchising ensures that local cable operators are allowed access to the rights-of-way in a fair and evenhanded manner, that other users of the rights-of-way are not unduly inconvenienced, and that uses of the rights-of-way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Albuquerque therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,
CITY OF ALBUQUERQUE

A handwritten signature in black ink, appearing to read 'Bruce J. Perlman', is written over the text 'CITY OF ALBUQUERQUE'.

By: Bruce J. Perlman, Ph.D
Chief Administrative Officer

cc: NATOA, info@natoa.org
John Norton, John.Norton@fcc.gov
Andrew Long, Andrew.Long@fcc.gov